STATE OF MICHIGAN
IN THE SUPREME COURT

LAWRENCE T. CURTIS,

Plaintiff-Appellee,

v

CITY OF DETROIT,

Defendant-Appellant.

_____/

Supreme Court No.

Court of Appeals No. 241632 Grn 11/25/03 Rcd 4/12/04

Wayne County Circuit Court
No. 00-032355 CH

W. Moore

KIM CORBIN (P-39273)
Attorney for Plaintiff-Appellee
15206 Mack Avenue
Grosse Pointe Park, MI 48224
(313) 886-4466

SHERI L. WHYTE (P-41858)
Attorney for Defendant-Appellant
CITY OF DETROIT LAW DEPARTMENT
1650 First National Building
Detroit, MI 48226
(313) 237-3076

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DEFENDANT-APPELLANT'S APPLICATION FOR LEAVE TO APPEAL
EXHIBITS A-T
PROOF OF SERVICE

BY: SHERI L. WHYTE (P-41858)
Assistant Corporation Counsel
City of Detroit Law Department
1650 First National Building
Detroit, MI 48226
(313) 237-3076

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APPLICATION STATEMENT

In the instant case, Plaintiff Lawrence T. Curtis filed an action against the City of Detroit alleging trespass in connection with the demolition of the property located at 9143 Mack in Detroit. On June 30, 1994, the City Council of the City of Detroit properly ordered the demolition of this building. At that time the building was owned by the City of Detroit, which was in the process of selling to Barbara Hoyle. Consistent with the requirement of the ordinance, the City notified Ms. Hoyle of the pending demolition and, while not required by the ordinance, it filed a Lis Pendens of its intent to demolish with the Wayne County Register of Deeds on June 7, 1994. Unbeknownst to the City, Hoyle sold the property to the Plaintiff via quitclaim deed on November 13, 1998. Unaware of the sale, and with no legal duty to inquire, the City completed the demolition.

Plaintiff claimed that the demolition of his property was unlawful because the Notice of Lis Pendens had expired - *not* because the statute or ordinance required any notice to him. On this basis the circuit court granted summary disposition to Plaintiff on his claim for trespass, and the Court of Appeals affirmed in this respect.

Defendant City contends that the circuit court and Court of Appeals clearly erred since neither State statutes nor City ordinances regarding dangerous buildings contain a requirement of a Lis Pendens, nor any penalty for an expired one. The statutory language is clear and unambiguous, and must be enforced as written. The courts below improperly substituted their own policy preferences for what the Legislature and City Council have written, grafting a requirement of a current Lis Pendens onto the statute and ordinance. Thus, since it is undisputed that the City of Detroit complied with the statute and ordinance (and the Court of Appeals held that it did), the City was entitled to summary disposition and the Court of Appeals' ruling on the trespass issue should

be reversed.

Defendant City, therefore, asks that this Court reverse the Court of Appeals' decision in all respects except the vacation of the $2,000.00 in property taxes (found in Part IV), and enter judgment in the City's favor.

Further, the Court of Appeals held that had the Lis Pendens been current, "... a subsequent **bona fide purchaser for value such as plaintiff** would have acquired the property subject to the order of demolition." See Exhibit S at 2 (emphasis added). However, neither court below considered or decided the issue of whether Mr. Curtis was in fact a bona fide purchaser for value, and there is ample evidence in the record from which the trial court could conclude that he was not. Consequently, Defendant City alternatively seeks a remand to the trial court to determine whether Plaintiff Curtis was a bona fide purchaser for value and, if so, what notice (if any) he was entitled to.

Defendant raises three other issues in this Application. Second, Plaintiff pled the common-law tort of trespass (Count III) and not trespass-nuisance, and the City of Detroit is governmentally immune for intentional torts such as trespass. Third, the trial court did not adequately articulate the legal theory on which it found liability, necessitating reversal and remand.

Fourth, and finally, the circuit court improperly awarded statutory interest on $25,000.00 of the $30,000.00 judgment from the date of the demolition. This is contrary to MCL 600.6013(8), which provides that interest is calculated from the date of filing of the complaint. At a minimum, then, remand is required to recalculate this.

STATEMENT OF JURISDICTION

This is an Application for Leave to Appeal pursuant to MCR 7.302. Defendant-Appellant, City of Detroit, appealed the Order Denying Defendant City of Detroit's Motion to Set Aside Judgment, entered May 3, 2002; the Judgment, entered March 25, 2002; the Order Denying Defendant City of Detroit's Motion for Reconsideration of Order Granting Plaintiff's Motion for Summary Disposition, entered March 8, 2002; and the Order Granting Plaintiff's Motion for Summary Disposition, entered January 25, 2002. Defendant City timely filed its Motion to Set Aside Judgment under MCR 2.610(A)(1) on April 15, 2002. The trial court denied this motion by Order entered on May 3, 2002, and Defendant timely filed its Claim of Appeal in the Court of Appeals on May 23, 2002.

On November 25, 2003, the Court of Appeals issued its per curiam opinion in this case (Exhibit S), affirming the judgment in part and vacating in part (as to $2,000.00 in property taxes which the trial court included as damages). On December 16, 2003, Defendant filed a timely Motion for Reconsideration in the Court of Appeals, which that Court denied by Order entered January 12, 2004. This timely Application follows.

Defendant asks that this Court reverse the Court of Appeals' decision in all respects except the vacation of the $2,000.00 in property taxes (found in Part IV), thereby entering judgment in the City's favor.

STATEMENT OF QUESTIONS INVOLVED

I. DID THE CITY OF DETROIT COMPLY WITH ALL LEGAL REQUIREMENTS IN GIVING NOTICE FOR THE DEMOLITION OF PLAINTIFF'S PROPERTY?

The trial court answered,	"No."
The Court of Appeals answered,	"No."
The Appellant answers,	"Yes."
The Appellee answers,	"No."

II. IS THE CITY OF DETROIT IMMUNE AS A MATTER OF LAW TO PLAINTIFF'S CLAIM FOR TRESPASS?

The trial court answered,	"No."
The Court of Appeals answered,	"No."
The Appellant answers,	"Yes."
The Appellee answers,	"No."

III. DID THE TRIAL COURT FAIL TO CLEARLY ARTICULATE ON WHICH LEGAL THEORY IT GRANTED JUDGMENT TO PLAINTIFF, NECESSITATING AT A MINIMUM REVERSAL AND REMAND?

The trial court did not answer this question.	
The Court of Appeals answered,	"No."
The Appellant answers,	"Yes."
The Appellee answers,	"No."

IV. DID THE TRIAL COURT ERR IN AWARDING PREJUDGMENT INTEREST TO THE DATE OF THE DEMOLITION?

The trial court did not answer this question.	
The Court of Appeals answered,	"No."
The Appellant answers,	"Yes."
The Appellee answers,	"No."

STATEMENT OF FACTS

On June 30, 1994, the City Council of the City of Detroit properly ordered the demolition of the building at 9143 Mack in Detroit. See Exhibit A. At that time the building was owned by the City of Detroit, which was in the process of selling it to Barbara Hoyle. Consistent with the requirement of the ordinance, the City notified Ms. Hoyle of the pending demolition (see Exhibit B) and, while not required by the ordinance, it filed a Lis Pendens of its intent to demolish with the Wayne County Register of Deeds (see Exhibit C).

Hoyle made two attempts to have the demolition order rescinded, once on July 17, 1995 (see Exhibit D) and again on April 6, 1998 (see Exhibit E). Both of Hoyle's requests were denied because the subject property was still open to trespass (see Exhibit F) and because there were outstanding property taxes (see Exhibit G). The building was demolished on September 13, 1999.

Unbeknownst to the City, between the City's last denial of Ms. Hoyle's request to rescind the demolition, and the demolition (ten months before the demolition), Hoyle sold the property to the Plaintiff via quitclaim deed on November 13, 1998. The quitclaim deed was recorded with the Wayne County Register of Deeds on January 13, 1999 (see Exhibit H). Not knowing of this development, nor having any legal duty to inquire, the City completed the demolition as planned. Curtis claims that the first time he had any knowledge of the Lis Pendens and the demolition order was when he saw his property being demolished. Dep. of Lawrence T. Curtis at 57-58 (Exhibit I).

Plaintiff claims that he performed a title search on the subject property, but did not discover the Lis Pendens filed on June 7, 1994 by the City of Detroit. Dep. of Lawrence T. Curtis at 39-41 (Exhibit J). The Lis Pendens served as notice that there may be a potential lien on the property for demolition costs after the demolition is carried out. Hoyle did not indicate to Plaintiff that

demolition proceedings were ongoing, and he did not ask her about this. Dep. of Lawrence T. Curtis at 45 (Exhibit K). Significantly, the Plaintiff was aware that for at least 4 years the building was vacant (TR 3/7/02 at 94-95 - Exhibit L), and that it was open to trespass at the time he acquired it (TR 3/7/02 at 95 - Exhibit L). The utilities were shut off, and Plaintiff made no effort to have them turned on. (TR 3/7/02 at 61, 110 - Exhibit M). Although the Plaintiff claims to have made improvements to the building, he never gave notice to the City of Detroit of improvements, which may have prevented the demolition of the building, i.e.; making the building a "safe" structure. In other words, he failed to obtain permits for any of the work he claims to have done on the building. TR 3/7/02 at 111 (Exhibit N).

Most significantly, Plaintiff is experienced with real properties; he owns or has owned several businesses and residences in the City of Detroit. (TR 3/7/02 at 54 - Exhibit O). At his deposition, Plaintiff testified that he personally or his attorney had performed title searches on other properties. (Dep. Of Lawrence T. Curtis at 31-33 - Exhibit P). He personally performed a title search relative to this property on Mack, but did not discover the City's Lis Pendens. (Dep. of Lawrence T. Curtis at 39-41 - Exhibit J).

On October 3, 2000, Plaintiff filed the instant lawsuit against the City of Detroit. His complaint contained three counts -- Count I: Federal 1983 Action for "Taking;" Count II: Gross Negligence; and Count III: Trespass. On November 9, 2000, the circuit court, Hon. Isidore B. Torres, dismissed Count I by stipulated Order.

On October 29, 2001, Plaintiff filed a Motion for Summary Disposition, arguing that (1) he did not have actual notice of the demolition; and (2) he had no constructive notice since the City's Lis Pendens had expired by operation of statute. On January 17, 2002, Defendant City filed its

Response and a counter-Motion for Summary Disposition pursuant to MCR 2.116(I)(2). The trial court, Hon. Warfield Moore, Jr. (Judge Torres rescued himself and the case was reassigned on October 24, 2001), held a hearing on January 25, 2002, at which time it granted summary disposition to Plaintiff on the question of liability. The Order Granting Plaintiff's Motion for Summary Disposition was entered that day. Defendant filed a Motion for Reconsideration on February 8, 2002, which the circuit court denied on the record on March 7, 2002. The Order denying the Motion for Reconsideration was entered on March 8, 2002. The case proceeded to a bench trial on damages, which began on March 7, 2002 and ended on March 12, 2002, with a verdict against the City in the amount of $35,000.00. The court entered a Judgment on March 25, 2002, in a total amount of $40,513.79 (Exhibit R). This amount included interest from the date of the demolition on $25,000.00 of the $35,000.00 in the amount of $4,298.79, and costs in the amount of $1,215.00. The court did not entertain any argument from the City on this issue of whether interest from the date of demolition, rather than from the date of filing of the Complaint, was appropriate. Finally, the damages included $1,500.00 to $2,000.00 for taxes which Plaintiff claimed to have paid on the property. TR 3/12/02 at 60 (Exhibit Q).[1]

On April 15, 2002, Defendant filed a Motion to Set Aside Judgment. The circuit court held a hearing on May 3, 2002, at which time it denied this motion. The Order Denying Defendant's Motion to Set Aside Judgment was entered that day. Defendant City filed its Claim of Appeal in this Court on May 23, 2002.

On November 25, 2003, the Court of Appeals issued its per curiam opinion in this case

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[1] The Court of Appeals vacated the award of $2,000.00 in property taxes as a measure of damages (see Exhibit S at 4-5), and that action is not a subject of the instant Application.

(Exhibit S), affirming the judgment in part and vacating in part (as to $2,000.00 in property taxes which the trial court included as damages). On December 16, 2003, Defendant filed a timely Motion for Reconsideration in the Court of Appeals, which that Court denied by Order entered January 12, 2004 (Exhibit T). This timely Application follows.

ARGUMENT

I. THE CITY OF DETROIT COMPLIED WITH ALL LEGAL REQUIREMENTS REGARDING NOTICE TO THE OWNER OF RECORD.

A. Standard of Review

In this case, the trial court granted summary disposition to Plaintiff. This Court reviews a decision on a motion for summary disposition de novo. Pohutski v Allen Park, 465 Mich 675, 681; 641 NW2d 219 (2002). Further, this case involves an issue of statutory construction, which this Court also reviews de novo. Id.

B. The City Gave All Notices Required by State Statute and City Ordinance.

Plaintiff claimed entitlement to judgment simply because the lis pendens was allegedly not discovered by Plaintiff, and at that time, the lis pendens, while still of record and unreleased, had expired pursuant to MCL 600.2715(1). This subsection reads, in pertinent part: "A notice of pendency hereafter filed for record shall be effective as notice for a period of 3 years from the date of filing." Plaintiff had the obligation to investigate and determine whether any demolition orders were pending when he purchased the property. Plaintiff owns or has owned several businesses and residences in the City of Detroit. (TR 3/7/02 at 54 - Exhibit O). At his deposition, Plaintiff testified that he personally or his attorney had performed title searches on other properties. (Dep. Of Lawrence T. Curtis at 31-33 - Exhibit P). He personally performed a title search relative to this property on Mack, but did not discover the City's Lis Pendens. (Dep. of Lawrence T. Curtis at 39-41 - Exhibit J). It is surprising that Plaintiff, an experienced businessman and property owner, performed a title search, but did not discover the lis pendens. It was there for him to find, but he did not locate it. Consequently, the Lis Pendens (or lack thereof) did not proximately cause any harm

to Mr. Curtis because he did not rely or fail to rely on it or its expiration in any way.

The City fully complied with the Michigan Housing Law, MCL 125.401 et seq, as well as Detroit City Ordinance 290-H in effectuating notice of the demolition of subject property. The Michigan Housing Law sets forth minimum requirements for municipalities. MCL 125.401 states, in pertinent part:

> The provisions of the act shall be held to be the minimum requirements adopted for the protection of health, welfare and safety of the community. Nothing herein contained shall be deemed to invalidate existing ordinance or regulations of any city or organized village or the board of health of any such city or village imposing requirements higher than the minimum requirements laid in this act...

MCL 125.540 goes on to establish the minimum requirements for notice:

> (1) Notwithstanding any other provision of this act, if a building or structure is found to be a dangerous building, the enforcing agency shall issue a notice that the building or structure is a dangerous building.
>
> (2) The notice shall be served on the owner, agent, or lessee that is registered with the enforcing agency under section 125. If an owner, agent, or lessee is not registered under section 125, the notice shall be served on each owner of or party in interest in the building or structure in whose name the property appears on the last local tax assessment records.

1984 Detroit City Code, § 12-11-28.4(a) provides:

> Notwithstanding any other provisions of this ordinance, when the whole or any part of any building or structure is found to be a dangerous building, the Building Official **shall issue a notice to the owner or owners of record** that the building or structure is a dangerous building and to appear before a hearing officer who shall be appointed by the Building Official to show cause at the hearing why the building or structure should not be demolished, repaired, or otherwise made safe. **All notices shall be in writing and shall be delivered by an agent of the department, or shall be sent by registered or certified mail return receipt requested to the last**

> **known address of such owner or owners**. In determining the last known address of the owner(s),. The department shall examine the record of the last City of Detroit and County of Wayne tax assessment and the record of the County of Wayne Registrar of Deeds. If an owner cannot be located after a diligent search, the notice shall be posted upon a conspicuous part of the building or structure.

(Emphasis Added). Note that the ordinance imposes greater requirements than the minimum established by State statute.

Neither the Michigan Housing Law nor the Detroit City Ordinances require that a demolition occur within a prescribed period of time, nor does it require that the City provide notice to any person other than the owner(s) of record at the time of that determination. Nor is a Notice of Lis Pendens required, although the City did file one. For these reasons, since it is undisputed that Plaintiff had no interest in the property at the time it was deemed a dangerous building, he was not entitled to notice, either actual or constructive.

Here, when the determination that the subject property was a dangerous building was made and the demolition was ordered by the Detroit City Council, the City gave notice to Barbara Hoyle, the owner of record. Barbara Hoyle exercised her due process right to contest that determination, twice, and failed. No law or ordinance requires the City to undertake any additional steps to protect a gullible buyer such as Curtis from being duped by an unscrupulous seller who has notice of a pending demolition, but does not disclose it to her buyer. There is no duty to look for any change in ownership of properties slated for demolition or to monitor all real estate transactions. The City fulfilled its duty of actual notice to Hoyle, the owner at the time that the building was deemed dangerous, and there is no doubt that notice was received. Furthermore, she was accorded full opportunity to challenge the demolition order, which she had done in 1995 and in 1998. Finally, the

City gave constructive notice to any individual conducting a title search of the property by filing a lis pendens, which was never released. Plaintiff cannot acquire greater due process rights than the prior owner simply by purchasing the property. Nor should the City be penalized for actually providing **more** notice than is required by either statute or ordinance, in the form of the Lis Pendens.

In short, the trial court and Court of Appeals read language into the statute and ordinance that is simply not there. In denying the City's Motion for Summary Disposition (and granting Plaintiff's cross-Motion for Summary Disposition), the court appeared to rely on the expiration of the Lis Pendens . TR 1/25/02 at 16 ("The fact that it was reported and had expired, I think kind of leaves you in the cold."). In denying the City's Motion for Reconsideration just before the trial on damages, it seemed to rely on both the expired Lis Pendens and the fact that the City did not notify Plaintiff prior to the demolition, although it is undisputed that he had no ownership interest in this property at the time the demolition process began. The circuit court stated:

> THE COURT: Yeah, but one of them could have been simply the City of Detroit renewing its lis pendence [sic] or if it's that many years between the time they indicate they're going to demolish and demolish, given the fact that property can indeed and does often change hands, they could have done something to be certain at the last moment that the -- that there had been no change in the title or ownership of this property, and they could have done that simply by going to the Register of Deeds and looking to see if there had been any deed -- any newly recorded transaction involving this property.

Tr 3/7/02 at 32. The trial court also relied on both of these factors in denying the City's Motion to Set Aside Judgment after trial. TR 5/3/02 at 3 ("The City, without any further adieu, not any further notice, without anything, without determining who was perhaps the title owner, went out and demolished the property.") and 5 ("If they had done it, if they had done it while the lis pendens was then, Mr. Curtis, who was on record and had been there and was in effect -- had force and effect of

law -- then, Mr. Curtis, I would have said, sorry, sir, you're out of the box."). The Court of Appeals agreed.

By the plain language of the statute and ordinance there is no requirement of a Lis Pendens (nor any penalty for an expired one), or for a subsequent check of records to determine whether a property in the Dangerous Buildings Program has been sold since the proceedings began. The language of the State statutes and City ordinance is clear and unambiguous; thus, the Court must apply it as written. See Lantz v Banks, 245 Mich App 621, 628 NW2d 583 (2001), in which a panel of this Court rejected the plaintiff's contention that the city clerk of Southfield was required to count absentee ballots postmarked on or before the close of the polls when the statute states that such ballots must be received by that time to be counted. At page 626, the court quoted from People v McIntire, 461 Mich 147, 153; 599 NW2d 102 (1999) (citation omitted) when it stated, "The role of the judiciary is to apply the terms of the statute as enacted by the Legislature lest 'a court ... impermissibly substitute its own policy preferences.'" In sum, this is precisely what the circuit court and Court of Appeals did in the case bar by grafting requirements onto the statute and ordinance that are not in their plain, clear and unambiguous language - they substituted their own policy preferences for what the Legislature and City Council have written.

It is undisputed that Defendant followed all procedures mandated by statute and ordnance; Plaintiff has never argued otherwise, but instead has relied primarily on the Lis Pendens. In response to Plaintiff's Motion for Summary Disposition, Defendant City sought summary disposition pursuant to MCR 2.116(I)(2), which provides that "[i]f it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party." Since it is undisputed that the City complied with all requirements of the statute

and ordinance, it was entitled to summary disposition under MCR 2.116(I)(2). The rulings of the circuit court and Court of Appeals should be reversed.

The City followed all legal requirements for providing notice regarding the demolition of this property. Consequently, the entry on the property and demolition thereof were authorized by law, and therefore not a trespass. A "trespass" is defined as "an **unauthorized** invasion upon the private property of another." American Transmission, Inc v Channel 7, 239 Mich App 695, 705; 609 NW2d 607 (2000) (Emphasis added); citing Cloverleaf Car Co v Phillips Petroleum Co, 213 Mich App 186, 195; 540 NW2d 297 (1995). The trial court erred in granting summary disposition to Plaintiff and awarding him judgment, and this Court should reverse as to Count III of the Complaint.

C. Defendant Is Not Liable for Plaintiff's Lack of Notice.

Plaintiff claims that the prior owner, Hoyle, did not inform him of the demolition proceedings and order, nor did Plaintiff inquire into this subject. Dep. of Lawrence T. Curtis at 45 (Exhibit K). The City had complied with all applicable laws, Michigan Housing Law and Detroit City Ordinances, by rendering the owner of record, Hoyle, notice and opportunities to be heard and to challenge the demolition order. Plaintiff's loss was not caused by the City's failure to notify him. Rather, Plaintiff's loss was a result of the fraud of Hoyle, and the result of his own lack of due diligence. Thus, the City submits that Plaintiff's appropriate course of action would be to seek relief from Hoyle.

D. The Circuit Court and Court of Appeals Erred in Grafting a Requirement of a Current Notice of Lis Pendens onto the Statute and Ordinance, Which by Their Clear and Unambiguous Language Do Not Require This.

In its opinion the Court of Appeals stated that "... defendant [City] complied with the notice

requirements of Michigan's housing law, MCL 125.540, and the Detroit City Code, § 12-11-28.4(a), in 1994 and 1995 [footnote omitted]." It also stated that "... neither [statute nor ordinance] makes provision for notice to subsequent purchasers [such as Plaintiff Curtis]." Slip op (Exhibit S) at 2. The City certainly agrees with both of these statements.

The Court of Appeals went on to find, however, that "... it is apparent that the housing law and the City Code contemplate that the person who receives notice of a demolition still own the building at the time of demolition, ..." and that the Legislature provided a procedure for constructive notice to any subsequent purchaser in the form of a Notice of Lis Pendens under MCL 600.2701. Slip op (Exhibit S) at 2. It held that "[i]f defendant had complied with the lis pendens statute, a subsequent bona fide purchaser for value such as plaintiff would have acquired the property subject to the order of demolition." Id. The Court concluded that Defendant City was liable because its Notice of Lis Pendens had expired and did not operate as constructive notice to Plaintiff. Id.

As the Court of Appeals stated, in this case Defendant City complied with the State statute and City ordinance regarding demolition. This is where the analysis should end, because the language is clear and unambiguous, and does not require a Notice of Lis Pendens or any other form of notice to a subsequent purchaser of the property in question. Nor does it require notice to anyone other than the owner(s) of record. The Michigan Housing Law sets forth minimum requirements for municipalities. MCL 125.401 states, in pertinent part:

> The provisions of the act shall be held to be the minimum requirements adopted for the protection of health, welfare and safety of the community. Nothing herein contained shall be deemed to invalidate existing ordinance or regulations of any city or organized village or the board of health of any such city or village imposing requirements higher than the minimum requirements laid in this act...
>
> .

MCL 125.540 goes on to establish the minimum requirements for notice:

> (1) Notwithstanding any other provision of this act, if a building or structure is found to be a dangerous building, the enforcing agency shall issue a notice that the building or structure is a dangerous building.
>
> (2) The notice shall be served on the owner, agent, or lessee that is registered with the enforcing agency under section 125. If an owner, agent, or lessee is not registered under section 125, the notice shall be served on each owner of or party in interest in the building or structure in whose name the property appears on the last local tax assessment records.

1984 Detroit City Code, § 12-11-28.4(a) provides:

> **Section 12-11-28.4 Notice of Dangerous Building; Show Cause Hearing at the Buildings and Safety Engineering Department; Show Cause Hearing Before the City Council; Lien:**
>
> (a) Notwithstanding any other provisions of this ordinance, when the whole or any part of any building or structure is found to be a dangerous building, the Building Official shall issue a notice to **the owner or owners of record** that the building or structure is a dangerous building and to appear before a hearing officer, who shall be appointed by the Building Official, to show cause at the hearing why the building or structure should not be demolished, repaired, or otherwise made safe. All notices shall be in writing and shall be delivered by an agent of the department, or shall be sent by registered or certified mail, return receipt requested, to the last known address of such owner or owners. **In determining the last known address of the owner(s),** the department shall examine the records of the last City of Detroit and County of Wayne tax assessment, and the records of the County of Wayne Registrar of Deeds. If an owner cannot be located after a diligent search, the notice shall be posted upon a conspicuous part of the building or structure.

(Emphasis Added). Note that the ordinance imposes greater requirements than the minimum established by State statute, as State law expressly permits.

The trial court and Court of Appeals, however, have added a requirement that does not appear

anywhere in the plain, clear and unambiguous language of the statute and ordinance - a current Notice of Lis Pendens where the plaintiff acquired the property subsequent to the demolition order. The State Legislature, and/or the Detroit City Council, could have included such a requirement but have chosen not to do so.

Since it is undisputed that Plaintiff had no interest in the property at the time notice was given, he was not entitled to notice under the statute and ordinance. As a result, since the City complied with the relevant statutes and ordinances, the demolition was authorized by law and no trespass occurred. A "trespass" is defined as "an **unauthorized** invasion upon the private property of another." American Transmission, Inc v Channel 7, 239 Mich App 695, 705; 609 NW2d 607 (2000) (Emphasis added); citing Cloverleaf Car Co v Phillips Petroleum Co, 213 Mich App 186, 195; 540 NW2d 297 (1995). Since the language of the State statutes and City ordinance is clear and unambiguous, the Court must apply it as written. See Lantz v Banks, 245 Mich App 621, 628 NW2d 583 (2001), in which a panel of the Court of Appeals rejected the plaintiff's contention that the city clerk of Southfield was required to count absentee ballots postmarked on or before the close of the polls when the statute states that such ballots must be received by that time to be counted. At page 626, the court quoted from People v McIntire, 461 Mich 147, 153; 599 NW2d 102 (1999) (citation omitted) when it stated, "The role of the judiciary is to apply the terms of the statute as enacted by the Legislature lest 'a court ... impermissibly substitute its own policy preferences.'" In sum, it was error for the circuit court and Court of Appeals to graft requirements onto the statute and ordinance that are not in their plain, clear and unambiguous language, and substitute their own policy preferences for what the Legislature and City Council have written. As a result, the judgment should be reversed in its entirety.

An additional requirement of a current Notice of Lis Pendens in the demolition statute and ordinance introduces a document into an administrative procedure for which the Notice of Lis Pendens was not intended. MCL 600.2701(1) reads:

> (1) To render the filing of **a complaint** constructive notice to a purchaser of any real estate, **the plaintiff** shall file for record, with the register of deeds of the county in which the lands to be affected by such constructive notice are situated, a notice of the pendency of such action, setting forth the title of the cause, and the general object thereof, together with a description of the lands to be affected thereby. (Emphasis added).

Thus, clearly, the purpose of a Notice of Lis Pendens is to give constructive notice of **litigation** involving property. Atty Gen v Ankersen, 148 Mich App 524, 557; 385 NW2d 658 (1986); quoting from Backowski v Solecki, 112 Mich App 401, 412; 316 NW2d 434 (1982). An administrative demolition procedure, such as the City of Detroit's in this case, is *not* litigation and does not involve the courts in any way. In any event, the position of the trial court and Court of Appeals, that a current Lis Pendens be on record, is inconsistent with the purpose of this document since even if the administrative procedure could be considered litigation, there would have been no "litigation" pending at the time Plaintiff Curtis acquired his interest in the property, since the dangerous buildings procedure had been completed and an order of demolition entered. Consequently, there was no pending procedure to give Plaintiff notice of.

The City of Detroit does file Notices of Lis Pendens as part of its dangerous buildings program, and did so in the instant case, in order to provide additional notice and to assert its lien against the property for demolition costs. This does not mean, however, that the Lis Pendens is an appropriate document to **require** in this instance.

In its Opinion the Court of Appeals adds the Lis Pendens requirement to both MCL 125.401

and 1984 Detroit City Code, § 12-11-28.4(a). See Exhibit S, slip op at 2:

> However, it is apparent that the housing law and the City Code contemplate that the person who receives notice of a demolition still own the building at the time of demolition, and neither makes provision for notice to subsequent purchasers. But our Legislature has provided a mechanism for precisely that purpose. See MCL 600.2701 (lis pendens as constructive notice).

As noted above, the Legislature intended a Notice of Lis Pendens to give notice of litigation, not administrative procedures. Moreover, by making a current Lis Pendens a requirement under the State statute (which by its own terms is the minimum standard) the Court of Appeals imposed such a requirement on every municipality in the state which conducts a demolition program, since the ordinances establishing these programs derive from the Michigan Housing Law. This will impose a great burden on lower governments that the Legislature clearly did not intend. The Court of Appeals' ruling was erroneous, and this Court should reverse.

E. The Issue of Whether Plaintiff Was a Bona Fide Purchaser for Value Has Never Been Litigated; since the Notice Requirement May Depend upon Whether He Was, Defendant Alternatively Seeks a Remand to Consider this Issue.

Further, in its Opinion the Court of Appeals held that had the lis pendens been current, "... a subsequent **bona fide purchaser for value such as plaintiff** would have acquired the property subject to the order of demolition." Slip op (Exhibit S) at 2 (emphasis added). The issue of whether Plaintiff Curtis was in fact a bona fide purchaser for value was not considered by the circuit court, nor was it raised or briefed before the Court of Appeals; both courts appear to have simply assumed that he was. Since a different result might obtain if Plaintiff were not a bona fide purchaser for value, at a minimum a remand is necessary for the circuit court to determine whether or not Plaintiff Curtis was a bona fide purchaser for value and, if not, what notice, if any, he was entitled to.

In this regard, a "good-faith purchaser" is "[a] person who purchases property without notice of a defect in the vendor's title ... ." Royce v Duthler, 209 Mich App 682, 690; 531 NW2d 817 (1995). The Royce court went on to state that

> Notice is whatever is sufficient to direct attention of the purchaser of realty to prior rights or equities of a third party and to enable him to ascertain their nature by inquiry. Notice need only be of the possibility of the rights of another, not positive knowledge of those rights. Notice must be of such facts that would lead any honest man, using ordinary caution, to make further inquiries in the possible rights of another in the property. [Schepke v Dep't of Natural Resources, 186 Mich App 532, 535; 464 NW2d 713 (1990).]

Id. In the case at bar, there is evidence in the record from which the trial court could conclude that Plaintiff was not a good-faith purchaser for value, in other words, that he had notice of facts that would lead an honest person to make further inquiry as to whether this open, vacant building may be subject to a demolition order. For example, Plaintiff testified that he was aware that the building had been vacant since1994 (TR 3/7/02 at 94-95), and that it was open to trespass at the time he acquired it (TR 3/7/02 at 95). The utilities were shut off, and Plaintiff made no effort to have them turned on. (TR 3/7/02 at 61, 110). There was "a lot of trash" dumped on the property at the time he bought it. (TR 3/7/02 at 61). Plaintiff acquired the property via quitclaim deed. (TR 3/7/02 at 58; Plaintiff's Trial Exhibit 1).

In short, on remand the circuit court could find from the record evidence that Plaintiff Curtis was not a bona fide purchaser for value, and consequently not entitled to constructive notice via a current Notice of Lis Pendens. Therefore, Defendant-Appellant seeks, in the alternative, a remand to the trial court to consider these issues.

II. THE CITY OF DETROIT IS IMMUNE FOR INTENTIONAL TORTS SUCH AS TRESPASS.

Count III of Plaintiff's Complaint alleges trespass. Trespass is an intentional tort. It has four elements: plaintiff's possession of title to the land; defendant's invasion of the real property; intent to do the act; and causation. Rogers v Kent Bd of County Rd Comm, 319 Mich 661; 30 NW2d 358 (1948); Isle Royale Mining Co v Hertin, 37 Mich 332 (1887); Difronzo v Port Sanilac, 166 Mich App 148; 419 NW2d 756 (1988); Tittiger v Johnson, 103 Mich App 437; 303 NW2d 26 (1981). Plaintiff did not plead a trespass-nuisance under Hadfield v Oakland Co Drain Comm'r, 430 Mich 139; 422 NW2d 205 (1988), overruled by Pohutski v Allen Park, 465 Mich 675; 641 NW2d 219 (2002).

Generally, with four narrowly drawn exceptions, governmental agencies are immune from all tort claims when engaged in the exercise or discharge of a governmental function. MCL 691.1407(1) reads, in pertinent part:

> (1) Except as otherwise provided in this act, a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function.

See also Ross v Consumers Power Co (On Reh), 420 Mich 567; 363 NW2d 641 (1984). The Act provides for very few exceptions to governmental immunity. These include: (1) defective highways, MCL 691.1402; (2) negligent operation of city owned vehicles, MCL 691.1405; (3) defective public buildings, MCL 691.1406; and (4) proprietary functions, MCL 691.1413. None of these exceptions apply on the facts of the instant case, and Plaintiff has not attempted to invoke any of them.

The statute, at § 1401(d), defines "governmental agency" as "the state or a political

subdivision." Section 1401(b) defines a "political subdivision" as "a municipal corporation, county, county road commission, school district, ..." Section 1401(a) further defines "municipal corporation" as "a city, village, or township, ..." Consequently, the City of Detroit is a governmental agency within the meaning of MCL 691.1407. Weaver v Detroit, 252 Mich App 239; 651 NW2d 482 (2002), app denied 468 Mich 864 (2003).

The governmental agency asserting immunity must be engaged in a governmental function at the time, in the place, and during the events about which Plaintiff complains. A governmental function is "an activity that is expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law." MCL 691.1401(f).

The City was clearly engaged in a governmental function - the operation of its dangerous buildings program - in this case. As described above, it is authorized by both State statute and City ordinance. Moreover, pleading the commission of an intentional tort by the agency's employee as reflected in Plaintiff's Complaint, Count III, fails to constitute an exception to statutory governmental immunity. Stein v MESC, 219 Mich App 118, 126; 555 NW2d 502 (1996) ("Plaintiffs can neither premise the MESC's liability upon the specific conduct of an employee nor hold the MESC liable for intentional torts."); Payton v Detroit, 211 Mich App 375, 393; 536 NW2d 233 (1995) ("Further, even if the officers were not engaged in the exercise or discharge of a governmental function within the scope of their employment, the city is nonetheless entitled to immunity because it cannot be held liable for the intentional torts of its employees."); Bell v Fox, 206 Mich App 522, 525-526; 522 NW2d 869 (1994) ("We note that, contrary to plaintiff's argument, there is no intentional tort exception to the doctrine of governmental immunity."); Harrison v Corrections Dep't Dir, 194 Mich App 446, 450; 487 NW2d 799 (1992) ("Because there is no intentional tort exception to

governmental immunity [citing Smith], defendant state agencies were immune from liability even if the release of Byars may have resulted in an intentional tort."); Alexander v Riccinto, 192 Mich App 65, 71-72; 481 NW2d 6 (1991) ("If the factfinder determines that defendant Riccinto did not act in good faith or in the course of his employment, the defendant city is still immune, because it cannot be held vicariously liable for the intentional torts of its employees."); Smith v Dep't of Public Health, 428 Mich 540, 544 (memorandum opinion), 593 (opinion by Brickley, J.); 410 NW2d 749 (1987) ("... no intentional tort exception exists, and an act 'may be [the] exercise or discharge of a governmental function even though it results in an intentional tort.'").

Therefore, the City of Detroit is immune as to Plaintiff's trespass claim, and summary disposition should have been granted as a matter of law as to Count III as well. For this reason, Defendant City asks that this Court reverse the decisions of the circuit court and Court of Appeals.

III. THE CIRCUIT COURT DID NOT CLEARLY ARTICULATE THE LEGAL THEORY ON WHICH IT FOUND LIABILITY, AND THEREFORE AT A MINIMUM THIS COURT SHOULD REVERSE AND REMAND.

In its various rulings the circuit court never clearly articulated the legal theory on which it granted judgment to Plaintiff - gross negligence or trespass. In denying Defendant's Motion for Reconsideration on March 7, 2002, it seemed to rule that the City was negligent. TR 3/7/02 at 44 ("I believe that the City was negligent in giving notice to Mr. Curtis, since he is the Plaintiff."). On May 3, 2002, when it denied the Motion to Set Aside Judgment, it appeared to hold that the City was liable for a trespass. TR 5/3/02 at 4 ("I mean, they can do a whole -- the City can do a whole bunch of things that would, you know, be a trespass on the property and cause damage to the People, and you say, they're the City and they can do anything they want.").

MCR 2.517(A)(1) reads:

> In actions tried on the facts without a jury or with an advisory jury, the court shall find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment.

Here, the circuit court did not clearly state its legal basis for finding liability. Thus, it did not comply with MCR 2.517(A)(1). In Wilson v Fireman's Insurance Co of Newark, 60 Mich App 76; 230 NW2d 315 (1975), this Court set aside a judgment and remanded where the trial court did not set forth the factual or legal basis for its findings, as required by the predecessor rule to MCR 2.517. In this case, as in Wilson, the circuit court did not articulate the legal basis for its ruling, and the Judgment does not state the basis either. Therefore, at a minimum this Court should reverse the judgment and remand the case for further proceedings.

IV. THE TRIAL COURT ALSO ERRED IN AWARDING INTEREST FROM THE DATE OF THE DEMOLITION.

Remand, at a minimum, is also required for another reason. In its Judgment (Exhibit R), the trial court awarded interest from the date of the demolition, rather than from the date of filing of the complaint. This is contrary to statute. MCL 600.6013(8) provides that "... interest on a money judgment recovered in a civil action is calculated at 6-month intervals **from the date of filing of the complaint** at a rate of interest ... ." (Emphasis added). The Court of Appeals panel seemed to believe that the circuit court was awarding interest as an item of damages (see Exhibit S at 4), but in reality the judgment was for $35,000.00 in damages, with interest at the statutory rate from the date of demolition on $25,000.00 of that amount (see Exhibit R). In short, the trial court awarded statutory interest, but from an incorrect date. At a minimum, then, remand is required to recalculate the interest.

RELIEF REQUESTED

WHEREFORE, based upon all of the above reasons, Defendant-Appellant City of Detroit respectfully requests that this Honorable Court grant leave to appeal, reverse the decision of the Court of Appeals in all respects except the vacation of $2,000.00 in property taxes (found in Part IV), and grant judgment to Defendant City; or in the alternative reverse and remand for further proceedings.

Respectfully submitted,

Ruth C. Carter (P-40556)
Corporation Counsel

BY: Sheri Whyte

Sheri L. Whyte (P-41858)
Assistant Corporation Counsel
City of Detroit Law Department
First National Building
660 Woodward Avenue, Suite 1650
Detroit, Michigan 48226
(313) 237-3076

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